

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RON HENRY, et al.

Plaintiff(s),

v.

JPMORGAN CHASE & CO, et al.

Defendant(s).

CASE NO:

2:15-cv-03895-DSF-JPR

INITIAL STANDING ORDER

**READ THIS ORDER CAREFULLY. IT CONTROLS THIS CASE
AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.**

COUNSEL FOR PLAINTIFF SHALL IMMEDIATELY SERVE THIS
ORDER ON ALL PARTIES, INCLUDING ANY NEW PARTIES TO THE
ACTION. IF THIS CASE WAS REMOVED FROM STATE COURT, THE
DEFENDANT WHO REMOVED THE CASE SHALL SERVE THIS ORDER
ON ALL OTHER PARTIES.

**COUNSEL MUST ADVISE THE COURT IMMEDIATELY IF THE CASE
OR ANY PENDING MATTER HAS BEEN RESOLVED.**

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Both the Court and counsel bear responsibility for the progress of litigation in federal court. To “secure the just, speedy, and inexpensive determination” of this case, Fed. R. Civ. P. 1, all counsel are ordered to become familiar with the Federal Rules of Civil Procedure (“Rule __”) and the Local Rules of the Central District of California (“Local Rule __”).

IT IS ORDERED:

1. Service of the Complaint

The plaintiff shall promptly serve the complaint in accordance with Rule 4 and file the proofs of service pursuant to Local Rule 5–3.1. Although Rule 4(m) does not require the summons and complaint to be served for 120 days, the Court expects service much sooner. The Court will require plaintiffs to show good cause to extend the service deadline beyond 120 days.

2. Presence of Lead Counsel

All lead trial counsel shall attend any proceeding set by this Court, including all scheduling, pretrial, and settlement conferences. Unless lead counsel’s absence is excused by the Court for good cause in advance of the hearing, or is due to an emergency that prevented prior notice, the Court reserves the right to designate the attorney handling such proceeding as lead counsel for all purposes. The Court does not allow appearances by telephone. Failure of lead counsel to appear will be grounds for sanctions.

3. Documents Filed With the Court

Typeface shall comply with Local Rule 11–3.1.1. If Times New Roman font is used, the size must be no less than 14; if Courier is used, the size must be no less than 12. Footnotes shall be in typeface no less than one size smaller than text size and shall be used sparingly.

Filings that do not conform to the Local Rules and this Order will not be considered.

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1 **4. Discovery and Discovery Cut-off** ^{#547}

2 a. Compliance with Rule 26(a): The Court encourages counsel to agree to
3 begin to conduct discovery actively before the scheduling conference. The parties
4 should comply fully with the letter and spirit of Rule 26(a) and obtain and produce
5 most of what would otherwise be produced in the early stages of discovery. At the
6 scheduling conference the Court will impose strict deadlines for completion of
7 discovery. Inability to complete discovery within the deadlines set at the conference
8 will not constitute grounds for a continuance in the absence of good cause.

9 b. Discovery Motions: Counsel are expected to resolve discovery disputes
10 among themselves in a courteous, reasonable, and professional manner. All
11 discovery matters have been referred to the assigned magistrate judge, who will
12 hear all discovery disputes. (The magistrate judge's initials follow the district
13 judge's initials next to the case number.) All discovery documents must include the
14 words "DISCOVERY MATTER" in the caption to ensure proper routing. Counsel
15 are directed to contact the magistrate judge's courtroom deputy clerk to schedule
16 matters for hearing. Counsel should not deliver Chambers copies of these
17 documents to this Court.

18 In accordance with 28 U.S.C. § 636(b)(1)(A), the Court will not reverse any
19 order of the magistrate judge, including one imposing sanctions, unless it has been
20 shown that the magistrate judge's order is clearly erroneous or contrary to law.

21 Any party may file and serve a motion for review and reconsideration before
22 this Court. The moving party must file and serve the motion within 14 days of
23 service of a written ruling or within 14 days of an oral ruling that the magistrate
24 judge states will not be followed by a written ruling. The motion must specify
25 which portions of the ruling are clearly erroneous or contrary to law and support
26 the contention with points and authorities. Counsel shall deliver a paper chambers
27 copy of the moving papers and responses to the magistrate judge's courtroom
28 deputy clerk no later than the day after filing.

5. E-Filing Requirements #548

a. Applicable Rules: Counsel shall e-file all filings pursuant to Rule 5(d)(3), Local Rule 5-4, and General Order 10-07.

b. Method of filing: All items that do not require the Court's signature shall be e-filed in .pdf format. All proposed signature items shall be e-filed as an attachment to the main document in .pdf format.

c. Use of Chambers E-Mail: All proposed signature items must be e-mailed to the Chambers e-mail address at dsf_chambers@cacd.uscourts.gov in WordPerfect (preferred) or Word format. A .pdf convertible to one of these formats is **not** acceptable. Parties seeking a proposed order based on a stipulation or an ex parte application should e-mail **both** the order and the stipulation or ex parte application. Parties should not e-mail the accompanying documents for other proposed signature items (such as a motion to dismiss) unless requested by the Court.

Proposed orders must be on pleading paper and should not contain attorney names, addresses, etc. on the caption page, should not contain a footer with the document name or other information, and should not contain a watermark or designation of the firm name, etc. in the margin.

d. Mandatory Paper Chambers Copies: Paper Chambers copies of all e-filed documents (except proofs of service) must be delivered to Judge Fischer's box across from the Clerk's office on the first floor of the Roybal Federal Building. Paper Chambers copies must be "blue-backed," with the title of the document on the lower right hand corner of the "blue-back," and must be "two-hole punched" at the top. Paper Chambers copies must be submitted no later than noon on the day after the e-filing. **Documents will not be considered until paper Chambers copies are submitted, so paper Chambers copies of all documents for which priority processing is requested should be submitted on the same day as the filing.** For security reasons, documents should be removed from envelopes.

1 **Attach the notice of e-filing to the BACK of the paper Chambers copy. Paper**
2 **Chambers copies** delivered by Federal Express should not require the signature of
3 the recipient. Paper Chambers copies are mandatory. Sanctions may be imposed
4 for failure to provide paper Chambers copies.

5 **6. Proposed Protective Orders and Filings Under Seal**

6 Proposed protective orders pertaining to discovery must be submitted to the
7 assigned magistrate judge. Proposed protective orders should not purport to allow,
8 without further order of this Court, the filing under seal of pleadings or documents
9 filed in connection with a dispositive motion (including a class certification motion)
10 or trial before Judge Fischer. The existence of a protective order does not alone
11 justify the filing of pleadings or other documents under seal, in whole or in part.

12 An application to file documents under seal must meet the requirements of
13 Local Rule 79–5. Documents that are not confidential or privileged in their entirety
14 should not be filed under seal if the confidential portions can be redacted and
15 filed separately with a reasonable amount of effort. The parties should file both a
16 complete version of the pleadings and documents under seal, and a redacted version
17 for public viewing, omitting only such portions as the Court has ordered may be
18 filed under seal.

19 There is a strong presumption of access in civil cases. *Foltz v. State Farm*
20 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). For each document or
21 other type of information sought to be filed under seal, the party seeking protection
22 must identify and discuss the factual or legal justification for the Court to find
23 “good cause” or “compelling reasons,” as appropriate, that such document or type
24 of information should be protected. *Kamakana v. City and County of Honolulu*,
25 447 F.3d 1172, 1179–80 (9th Cir. 2006).

26 **Sealing must be justified for each individual item to be sealed or redacted;**
27 **blanket claims of confidentiality are not allowed and will result in a denial of**
28 **the application to seal. Counsel are strongly encouraged to consider carefully**

whether sealing or redaction is required for a given piece of evidence or argument. The inclusion of clearly meritless requests to seal or redact documents may result in the complete rejection of an application to seal.

Documents that are not confidential or privileged in their entirety will not be filed under seal if the confidential portions can be redacted and filed separately.

The application to file documents under seal should include an explanation of why redaction is not feasible.

If a party wishes to file a document that has been designated confidential by another party, the submitting party must give any designating party five calendar days notice of intent to file. If the designating party objects, it should notify the submitting party and file an application to file documents under seal within two court days.

If the Court grants an application to file documents under seal, the Court's mandatory paper chambers copies must include a complete version of the documents with an appropriate notation identifying the document or the portion of the document that has been filed under seal.

7. Motions – General Requirements

a. Time for Filing and Hearing Motions: Motions will be heard no sooner two weeks after the deadline for filing the reply. Therefore, motion papers must be filed and served not later than 28 days before the hearing date. The Court expects that the parties will agree to an increased filing schedule for motions for summary judgment. Opposition papers must be filed and served not later than 21 days before the hearing date. Reply papers must be filed and served not later than 14 days before the hearing date. The remaining requirements of Local Rule 7 shall apply. This Court hears motions on Mondays, beginning at 1:30 p.m. If Monday is a court holiday, motions will be heard on the next Monday. If the motion date selected is not available, the Court will issue a minute order continuing the date. Opposition papers due on a Monday holiday may be filed the following Tuesday. In such cases,

1 reply papers may be filed on the next Tuesday. #551

2 Adherence to the timing requirements is mandatory for Chambers' preparation
3 of motion matters. The parties may stipulate to a different briefing schedule, so
4 long as the schedule provides at least two weeks between the filing of the reply
5 and the hearing date.

6 **If the parties are able to resolve the issue, or if a party intends to**
7 **withdraw or declines to oppose a motion, the party(ies) must notify the court**
8 **as soon as possible, but no later than seven days before the hearing date.**
9 **Failure to oppose a motion will likely result in the motion being granted**
10 **immediately after the opposition would have been due.**

11 b. Pre-filing Requirements: Counsel **must** comply with Local Rule 7–3,
12 which requires counsel to engage in a pre-filing conference “to discuss thoroughly
13 . . . the substance of the contemplated motion and any potential resolution.”
14 Counsel should discuss the issues to a sufficient degree that if a motion is still
15 necessary, the briefing may be directed to those substantive issues requiring
16 resolution by the Court. **The *pro per* status of one or more parties does not**
17 **eliminate this requirement. Failure to comply with this Rule will be grounds**
18 **for sanctions. If fault is attributed to the moving party, the Court may decline**
19 **to hear the motion.**

20 c. Length and Format of Motion Papers: Memoranda of points and
21 authorities in support of or in opposition to motions shall not exceed 25 pages.
22 Replies shall not exceed 12 pages. Only in rare instances and for good cause shown
23 will the Court grant an application to extend these page limitations. All exhibits
24 must be separated by a tab divider on the right or bottom of the document. If
25 documentary evidence in support of or in opposition to a motion exceeds 50 pages,
26 the evidence submitted to Chambers must be in a separately bound and tabbed
27 pleading and include a Table of Contents. If such evidence exceeds 200 pages,
28 the Chambers copy of such evidence shall be placed in a Slant D–Ring binder,

1 including a Table of Contents, with each item of evidence separated by a tab
2 divider on the right side or the bottom. All documents contained in the binder must
3 be three-hole punched with the oversized 13/32' hole size, not the standard 9/32'
4 hole size.

5 d. Citations to Case Law: Citations to case law must identify not only the
6 case cited, but the specific page referenced. When citing to legal databases (which
7 is not encouraged), whenever possible cite to Westlaw rather than Lexis.

8 e. Citations to Other Sources: Statutory references should identify with
9 specificity the sections and subsections referenced (e.g., Jurisdiction over this cause
10 of action may appropriately be found in 47 U.S.C. § 33, which grants the district
11 courts jurisdiction over all offenses of the Submarine Cable Act, whether the
12 infraction occurred within the territorial waters of the United States or on board a
13 vessel of the United States outside said waters). Statutory references that do not
14 specifically indicate the appropriate section and subsection (e.g., Plaintiffs allege
15 conduct in violation of the Federal Electronic Communication Privacy Act, 18
16 U.S.C. § 2511, et seq.) are to be avoided. Citations to treatises, manuals, and other
17 materials should include the volume, section, and pages being referenced. If these
18 are not readily accessible, copies should be attached. This is especially important
19 for historical materials, e.g., older legislative history.

20 f. Oral Argument: If the Court deems a matter appropriate for decision
21 without oral argument, the Court will notify the parties in advance.

22 g. Calendar Conflicts: Counsel are to inform opposing counsel and the
23 courtroom deputy clerk (via Chambers e-mail) as soon as a potential calendar
24 conflict is discovered. Counsel should attempt to agree on a proposed date to
25 accommodate the calendar conflict and the schedules of the counsel and the Court.

26 h. Telephone Inquiries: Telephone inquiries regarding the status of a motion,
27 stipulation, or proposed order will receive no response. Counsel may register for
28 Pacer access to monitor the Court's database. See www.cacd.uscourts.gov>General

Information>Pacer Access. Counsel are referred to the Court's website at
www.cacd.uscourts.gov>Judges' Procedures and Schedules> Hon. Dale S. Fischer
for further information regarding procedures and preferences.

8. Specific Motion Requirements

a. Motions Pursuant to Rule 12: Motions to dismiss are strongly discouraged. Many motions to dismiss or to strike can be avoided if the parties confer in good faith (as required under Local Rule 7-3), especially for perceived defects in a complaint, answer, or counterclaim that could be corrected by amendment. *See Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment). Moreover, plaintiff has the right to amend the complaint within 21 days after service, or 21 days after service of a responsive pleading or a motion under Rule 12(b), (e) or (f), whichever is earlier. Fed. R. Civ. P. 15(a). (Neither a stipulation nor the Court's permission is required.) Even after these deadlines have passed, the Federal Rules provide that the Court should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit requires that this policy favoring amendment be applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

These principles require that plaintiff's counsel carefully evaluate defendant's contentions as to the deficiencies in the complaint. In most instances the parties should agree to any amendment (if agreement is required) that would cure the defect.

These provisions apply as well to motions to dismiss a counterclaim, answer, or affirmative defense.

b. Amended Complaints: In addition to the requirements of Local Rule 15, all amended pleadings shall be serially numbered to differentiate the amendments from previous amendments.

1 c. Motions for Summary Judgment^{#554}: Parties should not wait until the motion
2 cut-off to bring motions for summary judgment or partial summary judgment. As
3 previously stated, the Court expects that the parties will agree to an increased filing
4 schedule for motions for summary judgment. Because summary judgment motions
5 are fact-dependent, parties should prepare papers in a fashion that will assist the
6 Court (*e.g.*, generous use of tabs, tables of contents, headings, indices, etc.). The
7 parties are to comply precisely with Local Rule 56–1 through 56–3.

8 Multiple motions for summary adjudication by the same party are
9 highly disfavored. Any party wishing to file more than one motion for summary
10 adjudication must move for leave of court and explain why the issues cannot be
11 addressed in a single motion. If multiple motions for summary adjudication are
12 filed by the same party without leave of court, the first filed motion will be
13 considered and the subsequent motions stricken.

14 1. Separate Statement of Uncontroverted Facts and Conclusions of
15 Law: The separate statement shall be prepared in a two-column format. The left-
16 hand column sets forth -- in sequentially-numbered paragraphs -- the allegedly
17 undisputed fact. The right-hand column sets forth the evidence that supports that
18 fact. Each paragraph should contain a narrowly-focused statement of fact
19 addressing a single subject as concisely as possible. **The moving, opposing,**
20 **and reply papers should refer to the numbered paragraphs in the separate**
21 **statement, rather than the underlying evidence.**

22 2. Statement of Genuine Disputes: The opposing party's statement of
23 genuine disputes must be in two columns. The left-hand column must restate the
24 opposing party's allegedly undisputed fact and track the moving party's separate
25 statement exactly as filed. The right-hand column must state whether the fact is
26 undisputed or disputed. The opposing party may dispute all or only a portion of
27 the statement of fact. If disputing only a portion, the statement of genuine disputes
28 must clearly indicate what part is being disputed, followed by the opposing party's

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evidence controverting the fact. The opposing party should not avoid admitting an undisputed fact by avoiding the issue. Only good faith disputes should be included. The Court will not wade through a document to determine whether a fact really is in dispute. To demonstrate that a fact is disputed, the opposing party must briefly state why it disputes the moving party's asserted fact, cite to the relevant exhibit or other evidence, and describe what in that exhibit or evidence refutes the asserted fact. No legal argument should be set forth in this document. The opposing papers should refer to the numbered paragraphs in the separate statement, rather than the underlying evidence.

The opposing party may also submit additional material facts that bear on or described relate to the issues raised by the movant, which shall follow the format above for the moving party's separate statement. These additional facts shall continue in sequentially-numbered paragraphs and shall set forth in the right-hand column the evidence that supports that statement.

3. Supporting Evidence: No party should submit evidence other than the specific items of evidence or testimony necessary to support or controvert a proposed statement of undisputed fact. For example, entire deposition transcripts, entire sets of interrogatory responses, and documents that do not specifically support or controvert material in the separate statements should not be submitted in support of or opposition to a motion for summary judgment. The Court will not consider such material. When submitting portions of deposition transcripts and other lengthy documents, however, the parties should be sure to provide all pages necessary to put the cited portion in context.

Evidence submitted in support of or in opposition to a motion should be submitted either by way of stipulation or as exhibits to declarations sufficient to authenticate the proffered evidence, and should not be attached to the memorandum of points and authorities. Documentary evidence as to which there is no stipulation regarding foundation must be accompanied by the testimony, either by declaration

1 or properly authenticated deposition transcript, of a witness who can establish
2 authenticity. The pleadings should refer to the exhibits by exhibit number only,
3 or by exhibit number and title of document — not merely by the title of the
4 document. For example, if Exhibit 1 is the License Agreement, the papers should
5 refer to “the License Agreement attached as Exhibit 1,” or “Exhibit 1,” not “the
6 License Agreement.”

7 4. Objections to Evidence: If a party disputes a fact based in whole or
8 in part on an evidentiary objection, the ground of the objection, as indicated above,
9 should be stated in the separate statement, but not argued in that document.
10 Evidentiary objections are to be addressed in a separate memorandum to be filed
11 with the opposition or reply brief. This memorandum should be organized to track
12 the paragraph numbers of the separate statement and statement of genuine disputes
13 in numerical sequence. It should identify the specific item of evidence to which
14 objection is made, and a brief argument with citation to authority as to why the
15 objection is well-taken. The following is the suggested format:

16 Separate Statement Paragraph 1: Objection to the supporting
17 deposition transcript of Jane Doe at 1:1–10 on the grounds that the
18 statement constitutes inadmissible hearsay for which no
19 exception applies. To the extent it is offered to prove her state of
20 mind, it is irrelevant because her state of mind is not in issue.

21 Fed. R. Evid. 801, 802.

22 **Do not submit blanket or boilerplate objections to the opponent’s statements**
23 **of undisputed fact. The objections will be overruled and disregarded.**

24 d. Motions for Attorneys’ Fees: In addition to any other requirements
25 imposed by statute or case law, motions for attorneys’ fees must comply with the
26 following.

27 1. Conference of Counsel: Prior to filing any motion for attorneys’ fees,
28 the moving party (“Movant”) shall contact opposing counsel (“Respondent”) to

1 discuss thoroughly the substance of the contemplated motion pursuant to Local
2 Rule 7–3. This conference of counsel must occur at least 21 days prior to the filing
3 of the motion. At least seven days prior to the conference of counsel:

4 (A) Movant shall provide Respondent with the billing records
5 on which the motion will be based, and shall specify the
6 hours for which compensation will and will not be sought.
7 These records may be redacted to prevent disclosure of
8 material protected by the attorney–client privilege or work
9 product doctrine.

10 (B) Movant shall inform Respondent of the hourly rates that
11 will be claimed for each lawyer, paralegal, or other person.
12 If Movant’s counsel or other billers have performed any
13 legal work on an hourly basis during the period covered by
14 the motion, Movant shall provide representative business
15 records sufficient to show the types of litigation in which
16 such hourly rates were paid and the rates that were paid in
17 each type, including a properly redacted fee agreement
18 under which they provided services in this action. If
19 Movant’s counsel has been paid on an hourly basis in the
20 case in question or in litigation of the same type as the case
21 in question, records showing the rates paid for those
22 services must be provided. If Movant will rely on other
23 evidence to establish appropriate hourly rates, such as
24 evidence of rates charged by attorneys of comparable
25 experience and qualifications or evidence of rates used in
26 previous awards by courts or administrative agencies,
27 Movant shall provide such other evidence.

28 (C) Movant shall furnish the evidence that will be used to

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support the related nontaxable expenses to be sought by the motion.

By providing the opposing party with information about the party's hours, billing rates, and related nontaxable expenses, no party shall be deemed to make any admission or waive any argument about the relevance or effect of such information in determining an appropriate award.

All information furnished by any party under this section shall be treated as strictly confidential by the party receiving the information. The information shall be used solely for purposes of the fee litigation, and shall be disclosed to other persons, if at all, only in court filings or hearings related to the fee litigation.

A party receiving such information who proposes to disclose it in a court filing or hearing shall provide the party furnishing it with prior written notice and a reasonable opportunity to request an appropriate protective order.

2. Form of Motion: The parties are to produce a Joint Statement for submission. At least seven days prior to the conference of counsel, Movant shall provide to Respondent a draft of its portion of a Joint Statement that will eventually be submitted to the Court. The Joint Statement shall be formatted as a spreadsheet in Microsoft Excel, or a table in WordPerfect or Microsoft Word. The spreadsheet or table must include columns to identify: (1) the date of each time entry; (2) the biller for each time entry; (3) a brief description of the task; (4) the number of hours requested by the Movant for the task; (5) the number of hours, if any, Respondent believes should be awarded for the task; and for disputed items (6) a brief summary of Movant's position; and (7) a brief summary of Respondent's position. A separate spreadsheet or table shall be prepared for any nontaxable costs sought by Movant. The spreadsheet or table of nontaxable costs must include columns to identify: (1) the item; (2) the amount sought by Movant for the item; (3) the amount, if any, Respondent believes should be awarded for the item; and for disputed items (4) a

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1 brief summary of Movant's position, and (5) a brief summary of Respondent's
2 position.

3 Following the conference of counsel, and no more than 14 days prior to the
4 filing of the Motion, Movant shall provide to Respondent the final version of its
5 portion of the Joint Statement in an electronic format. Respondent shall then input
6 its portion of the Joint Statement into the document and return the completed
7 document to Movant at least seven days prior to the filing of the Motion. Movant
8 shall then file the Joint Statement at the same time it files the Motion. In addition
9 to filing the Joint Statement, Movant shall email an electronic version of the Joint
10 Statement to this Court's chambers ECF email inbox.

11 Attorneys who may be seeking an award of fees should maintain time,
12 expense, and cost records in accordance with the order on the Court's website.

13 **N.B. PLEADINGS THAT FAIL TO COMPLY WITH THE ABOVE**
14 **FORMAT MAY NOT BE CONSIDERED.**

15 **9. Proposed Orders**

16 Each party filing or opposing a motion or seeking the determination of any
17 matter shall serve and lodge a Proposed Order setting forth the relief or action
18 sought and a brief statement of the rationale for the decision with appropriate
19 citations. The proposed order must be in the form described in paragraph 5.c.

20 **10. Telephonic Hearings**

21 The Court believes it is extremely useful for counsel to appear personally at
22 motions, scheduling conferences, etc. Therefore, it is unlikely that the Court would
23 agree to conduct such matters by telephone in the absence of an emergency, illness,
24 etc. preventing counsel from appearing in person. If an emergency occurs, counsel
25 shall attempt to contact all involved parties to advise of the situation. The attorney
26 requesting the telephonic hearing must contact the courtroom deputy clerk at the
27 earliest possible time before the date scheduled for the motion or conference to
28 seek the Court's permission to appear by telephone and to make the necessary

1 arrangements. The Court may choose instead to continue the hearing. #560

2 **11. Ex Parte Applications**

3 Ex parte applications are solely for extraordinary relief and are rarely justified
4 *See Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488
5 (C.D. Cal. 1995). Applications that fail to conform to Local Rules 7–19 and 7–19.1,
6 including a statement under oath about service and opposing counsel’s position,
7 will not be considered. The moving party shall electronically serve the opposing
8 party, if permitted, and shall also advise by telephone that such service has been
9 made. If the opposing party has not agreed to electronic service, the moving papers
10 must be faxed, if a facsimile number has been provided. Moving party shall also
11 notify the opposition that opposing papers must be filed no later than 24 hours (or
12 one court day) following such service. Failure of the opposing party to accept
13 electronic service or to provide a facsimile number will not extend this time period.
14 If opposing counsel does not intend to oppose the ex parte application, counsel must
15 advise the courtroom deputy clerk by telephone and Chambers e–mail. A paper
16 Chambers copy of moving, opposition, or notice of non–opposition papers must be
17 hand–delivered to Judge Fischer’s courtroom deputy clerk. The Court considers ex
18 parte applications on the papers and usually does not set these matters for hearing.
19 The application will not be considered until the paper Chambers copy has been
20 provided. Sanctions may be imposed for misuse of ex parte applications.

21 **12. Applications or Stipulations to Extend the Time to File any Required**
22 **Document or to Continue any Date**

23 No stipulation extending the time to file any required document or to continue
24 any date is effective until and unless the Court approves it, or unless the Federal
25 Rules of Civil Procedure provide for an automatic extension. Both applications and
26 stipulations must set forth:

27 a. The existing due date or hearing date, the discovery cut–off date, the last
28 day for hearing motions, the pretrial conference date and trial date;

1 b. Specific reasons (contained in a detailed declaration) supporting good
2 cause for granting the extension or continuance. (A statement that an extension
3 “will promote settlement” is insufficient. The requesting party or parties must
4 indicate the status of ongoing settlement negotiations. The possibility of
5 settlement ordinarily will not be grounds for continuance.);

6 c. Whether there have been prior requests for extensions, and whether these
7 requests were granted or denied by the Court; and

8 d. A description of the diligence of the party seeking the continuance and
9 any prejudice that may result if the continuance is denied.

10 The request must be made before the date to be continued. The Court grants
11 continuances only on a showing of good cause. Failure to comply with the Local
12 Rules and this Order will result in rejection of the request without further notice to
13 the parties.

14 **13. TROs and Injunctions**

15 Parties seeking emergency or provisional relief shall comply with Rule 65 and
16 Local Rule 65. The Court generally will not rule on any application for such relief
17 for at least twenty-four hours after the party subject to the requested order has been
18 served, unless service is excused. The opposing party may file position papers in
19 the interim.

20 **14. Cases Removed from State Court**

21 All documents filed in state court, including documents appended to the
22 notice of removal. *See* 28 U.S.C. § 1447(a) and (b). If the defendant has not yet
23 answered or moved, the answer, responsive pleading, or motion filed in this Court
24 must comply with the Federal Rules of Civil Procedure and the Local Rules of the
25 Central District. If, before the case was removed, a motion was pending in state
26 court, it must be re-noticed in accordance with Local Rule 7.

27 If an action removed to this Court contains a “form pleading” *i.e.* a pleading in
28 which boxes are checked, the party or parties that filed the form pleading must file

an appropriate pleading with this Court within 30 days of receipt of the notice of removal. This pleading must comply with the requirements of Rules 7, 7.1, 8, 9, 10, and 11.

15. Status of Fictitiously Named Defendants

This Court adheres to the following procedures when a matter is removed to this Court on diversity grounds with fictitiously named defendants referred to in the complaint. *See* 28 U.S.C. §§ 1441(a) and 1447.

a. Plaintiff shall ascertain the identity of and serve any fictitiously named defendants before the date of the Rule 16(b) scheduling conference. The Court generally will dismiss Doe defendants on the date of the scheduling conference, as they prevent the Court from accurately tracking its cases.

b. If plaintiff believes (by reason of the necessity for discovery or otherwise) that fictitiously named defendants cannot be fully identified within that period, a request to extend the time must be made in the Joint Rule 26 Report. Counsel should be prepared to state the reasons why fictitiously named defendants have not been identified and served.

c. If a plaintiff wants to substitute a defendant for one of the fictitiously named defendants, plaintiff shall first seek the consent of counsel for all defendants (and counsel for the fictitiously named party, if that party has separate counsel). If consent is withheld or denied, plaintiff should file a motion on regular notice. The motion and opposition should address whether the matter should thereafter be remanded to the superior court if diversity of citizenship is destroyed by the addition of the newly substituted party. *See* 28 U.S.C. §1447(c) and (e).

16. ERISA Cases Concerning Benefit Claims

The Court will hear motions to determine the standard of review, whether discovery will be permitted, and the scope of the administrative record. There will be a court trial (usually confined to oral argument) on the administrative record. Counsel are discouraged from filing motions for summary judgment or partial

1 summary judgment on any other issue. If they choose to do so, they must
2 distinguish *Kearney v. Standard Insurance Co.*, 175 F.3d 1084, 1095
3 (9th Cir. 1999) in the moving papers and explain why summary judgment is
4 not precluded.

5 **17. Bankruptcy Appeals**

6 Counsel shall comply with the NOTICE REGARDING APPEAL FROM
7 BANKRUPTCY COURT issued at the time the appeal is filed in the District
8 Court. The Court will determine whether oral argument will be held.

9 **18. Communications with Chambers**

10 Counsel shall not attempt to contact the Court or its Chambers staff by
11 telephone or by any other ex parte means. Counsel may contact the **courtroom**
12 **deputy clerk** with **appropriate** inquiries. To facilitate communication with the
13 courtroom deputy clerk, counsel should list their e-mail addresses and facsimile
14 transmission numbers along with their telephone numbers on all papers.

15 **19. Parties Appearing in Propria Persona**

16 *Pro per* litigants are required to comply with all local rules, including Local
17 Rule 16. In this Order, the term “counsel” includes parties appearing in *propria*
18 *persona*. Only individuals may represent themselves.

19 **20. “Notice of Unavailability”**

20 While the Court expects that counsel will conduct themselves appropriately
21 and will not deliberately schedule Court or other proceedings when opposing
22 counsel are unavailable, a “Notice of Unavailability” has no force or effect in this
23 Court. Such documents should not be filed.

24 **21. Compliance with Local Rules and Standing Orders**

25 At all stages of the proceedings, the parties and counsel are expected to
26 comply with the Local Rules and this Court’s standing orders. Before the
27 scheduling conference counsel shall review the Central District’s Civility and
28 Professionalism Guidelines (which can be found on the Court’s website under

1 "Attorney Information Attorney Admissions"). Counsel are expected to adhere
2 to this standard of conduct. Counsel are required to advise their clients of the terms
3 of this Order.
4

5 **CAVEAT: IF COUNSEL FAIL TO FILE THE REQUIRED JOINT**
6 **RULE 26(f) REPORT, OR THE REQUIRED PRETRIAL DOCUMENTS, OR**
7 **IF COUNSEL FAIL TO APPEAR AT THE SCHEDULING CONFERENCE,**
8 **THE PRETRIAL CONFERENCE, OR ANY OTHER PROCEEDING**
9 **SCHEDULED BY THE COURT, AND SUCH FAILURE IS NOT**
10 **SATISFACTORILY EXPLAINED TO THE COURT: (1) THE CAUSE SHALL**
11 **BE DISMISSED FOR FAILURE TO PROSECUTE, IF SUCH FAILURE**
12 **OCCURS ON THE PART OF THE PLAINTIFF, (2) DEFAULT (AND**
13 **THEREAFTER DEFAULT JUDGMENT) SHALL BE ENTERED IF SUCH**
14 **FAILURE OCCURS ON THE PART OF THE DEFENDANT, OR (3) THE**
15 **COURT MAY TAKE SUCH ACTION AS IT DEEMS APPROPRIATE.**

16 **IT IS SO ORDERED.**

17
18 DATED: May 26, 2015

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge